IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

MACA.No. 617 of 2003()

OPMV.1137/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA

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APPELLANT/PETITIONER IN OP

RADHAKRISHNAN K.M., AGED 32 YEARS,
S/O.LATE MADHAVAN, KADAKARA THATTAN HOUSE,
MANAKULANGARA DESAM, KODAKARA VILLAGE,
MUKUNDAPURAM TALUK,
THRISSUR DISTRICT.

BY ADV. SRI.M.A.ABDUL HAKHIM
SRI.JYOTHISH.J.KALLINGAL
SMT.M.A.VAHEEDA BABU

RESPONDENTS: RESPONDENTS IN OP

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1. T.G.DINESH S/O. GOPI, THRIPPEKULATH HOUSE, TRAMPEY LANE, KATTIPOKAM, CHALAKUDY,KERALA.

2. THE BRANCH MANAGER, NATIONAL INSURANCE CO.LTD., BRANCH OFFICE, VIGNESHWARA BUILDINGS, 2/7 PUDUKKOTTAI ROAD, THIRUCHIRAPALLI-620 020, TAMIL NADU.

R2 BY ADV. SMT.SARAH SALVY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 25/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR ,J.

M.A.C.A.No.617 of 2003

Dated, this the 25th day of October, 2007

JUDGMENT

The claimant in O.P.(MV) No.1137/1995 on the file of the Motor Accidents Claims Tribunal, Irinjalakuda is the appellant. Appellant filed the Original Petition alleging that on 5.2.1995 at about 9.15 p.m. he sustained injuries in a motor vehicle accident. In the Original Petition it was averred that he was walking along the road which lies in front of Chalakudy KSRTC bus stand from east to west and when he reached in front of Kallarakkal Auto Service a motor cycle bearing registration No.KL-8/D 2177 in which first respondent was riding came from behind and hit against his person causing serious injuries. Immediately after the accident the appellant was taken to the hospital by the first respondent rider and his friends. Appellant regained consciousness took conscious on the next day and informed his brother that he sustained the injuries in a motor vehicle accident. Information was given to the Chalakkudy Police by the brother and the Police had registered a case against the first respondent. It was averred that the accident occurred due to the negligence of the first respondent. Vehicle was covered with a valid policy of insurance issued by the second respondent. Appellant initially claimed an amount of Rs.60,000/- as compensation and subsequently it was enhanced to Rs.1,00,000/-.

2. First respondent filed a written statement admitting the accident. It

was contended that on 5.2.1995 at about 9.15 p.m. while first respondent was riding motor cycle bearing registration No.KL-8/D 2177 very slowly and observing traffic rules and when the vehicle reached in front of Kallarakkal Auto Service the alleged accident occurred. First respondent paid an amount of Rs.1,000/- to the appellant by way of compensation. It was also contended that the vehicle was covered with a valid policy of insurance. Quantum of compensation claimed was disputed and negligence alleged was denied.

3. Second respondent insurer also filed a written statement admitting that the vehicle was covered with a valid policy of insurance. It was contended that there was violation of policy conditions. It was contended that the rider was not holding driving licence. Age,income, etc. of the appellant were denied. It was contended that no accident-cum-wound certificate was produced to prove that appellant sustained injuries in a motor vehicle accident. Quantum of compensation claimed was disputed. It was also contended that the appellant did not sustain any injury in a motor vehicle accident. Hence the insurer is not liable to indemnify the compensation.

4. Before the Tribunal the appellant gave evidence as PW1. He examined a Doctor attached to Thrissur Medical College and produced Exts.A1 to A13. First respondent owner-cum-rider produced a copy of the driving licence. The Tribunal found that in the normal course the appellant is entitled to get Rs.48,300/- as compensation; but dismissed the application holding that the

appellant failed to establish that he sustained injuries in a motor vehicle accident. Challenging that award this appeal is filed.

5. Learned counsel appearing for the appellant has argued that the Tribunal failed to note that the first respondent who is the owner-cum-rider of the vehicle had admitted the accident and as such the insurer cannot be allowed to contend that no such accident took place. It is averred that since the owner-cum-rider admitted the accident there was no need to prove a fact which was admitted and that is why the appellant did not adduce any evidence regarding the accident. In column No.28 of the Original Petition it was averred that the appellant was walking along the road which lies in front of Chalakkudy K.S.R.T.C. Bus stand. When he reached in front of the Kallarakkal Auto Service a motor cycle bearing registration No.KL-8/D 2177 came from the rear side and hit against his person . According to the appellant immediately after the accident he became unconscious. He was taken to hospital by the first respondent rider and his friends. They tole the Doctor that the appellant sustained injuries due to a fall in the bathroom. Such an intimation was given to the Doctor by the first respondent to escape from the criminal liability. According to the appellant he regained consciousness only on the next day and immediately thereafter he informed his brother about the motor vehicle accident and thereafter only the Doctor prepared the accident-cum-wound certificate. As already stated the first respondent owner-cum-rider had admitted the accident. It is also to be noted that there is nothing on record to show that the

insurer had obtained permission to contest the matter on merits. The case put forward by the appellant was that he sustained injuries at about 9.15 p.m. on 5.2.1995; immediately after the accident he became unconscious; he was taken to the hospital by the first respondent and his friends and after admitting him there they gave the wrong information as regards the cause of injury. Ext.A6 is the accident-cum-wound certificate in which it was recorded that the Doctor examined the patient at 5 p.m. on 6.2.1995. But in the column provided for showing the cause of injury it was stated that he was admitted with the history of a fall in the bathroom and now the patient says that fall from a bike at 9 p.m. on 5.2.1995. In the details a number was written as 97955 and one more number was written as 39547. The appellant was referred to Ortho. Ext.A9 is the discharge summary. A reading of Ext.A9 shows that the appellant was admitted on 5.2.1995 and discharged on 1.3.1995. That shows that the O.P.Number was 97955 and that was converted as I.P.Number as 39547. Appellant has produced a treatment-cum-discharge certificate also. That also shows the date of admission as 5.2.1995 and he was discharged on 1.3.1995. But in that document the O.P.Number was written as 39547 and I.P.Number was written as 97955. Appellant was admitted by Dr. Prasad Varkey. Ext.A9 was also issued by that Doctor. There is some confusion regarding date of admission, treatment, etc. in this matter. As I have already stated before the Tribunal the owner-cum-rider of the vehicle admitted the accident. That being the position there is much force in the argument advanced by

the counsel for the appellant that the appellant never thought of proving an admitted fact. There was variance between O.P. and I.P. Numbers and further it is seen that the first history given was that it was a fall in bathroom and secondly it was written as fall from bike. In view of the unsatisfactory evidence given by the appellant it is not possible to accept his argument that since the owner-cum-rider had admitted the accident compensation is to be paid by the insurer. Considering all aspects of the matter I am of the view that the appellant be given another opportunity to clear the doubts in the mind of the Tribunal and adduce further evidence, if any. It is open to the appellant to file petitions to adduce further evidence, if so advised.

In the result, appeal is allowed. Award passed by the Tribunal in O.P.(MV) No.1137/1995 is hereby set aside in toto. Case is remanded to the Tribunal for fresh disposal in accordance with law. Both sides will be given an opportunity to adduce evidence, if so advised. Parties shall appear before the Tribunal on 10.12.2007.

K. PADMANABHAN NAIR,
JUDGE.

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